IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.592 OF 2002

Maharashtra Rajya Macchimar
Sahakari Sangh Ltd.,
through its Manager
Shri.Sadanand Damodar Naik ..Petitioners.

Vs.

The State of Maharashtra
through the Department of
Fisheries, Mantralaya & Ors. ..Respondents.

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Mr.Vijay Patil for the Petitioners.
Mr.L.Satelkar, AGP for Respondent Nos.1, 2 and 4.
Mr.L.M.Acharya for Respondent No.3.

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CORAM : DR.D.Y.CHANDRACHUD, J.

22nd March, 2005.

ORAL JUDGMENT :

1. Rule, made returnable forthwith by consent of

counsel. Counsel appearing on behalf of the Respondents waive service. By consent, taken up for hearing and final disposal.

2. The Petitioner is a co-operative society registered under the Maharashtra Co-operative Societies Act, 1960. Some time in the year 1951 Government of India erected an ice factory, a cold storage and a fish meal plant at Sasoon Docks at Colaba, Mumbai. On 1st May, 1964, the complex consisting of the ice factory, cold storage and fish meal plant came to be transferred to the Fisheries Department of the Government of Maharashtra. Maharashtra Fisheries Development Corporation Limited, which is the Third Respondent to these proceedings, was established on 5th February, 1973 and the aforesaid complex was transferred to it by the State Government. The MFDC operated the project between 1973 and 1976. The State Government thereafter took a decision on 29th July, 1976 to restructure the Third Respondent and the aforesaid project came to be transferred, in pursuance of the decision to restructure, to the Petitioner along with similar projects undertaken in various parts of

Maharashtra. The Petitioner took over the aforesaid project on 1st November, 1976. According to the Third Respondent at the time when the project was transferred to the Petitioner raw material and spare parts produced by the Third Respondent of the value of Rs.5,47,837/- were handed over by the Third Respondent to the Petitioner. The claim of the Third Respondent is that the aforesaid amount has not been paid to it by the Petitioner. On 1st July, 1985 the Government of Maharashtra took a decision to retransfer the ice factory, cold storage and fish meal plant at the Sasoon Docks back to the Third Respondent and this decision was accordingly implemented. All the 14 employees of the Petitioner were absorbed by the Third Respondent. On 16th September, 1989 the Petitioner made a claim of Rs.58.47 lacs on the Fisheries Department of the State Government. According to the Third Respondent, on 9th February, 1990 the Petitioner in a letter to the Secretary in the Agricultural, Animal Husbandry, Dairy Development and Fisheries Department admitted that the dues payable to the employees were liable to be paid by the Petitioner. It has been stated that in 1990 the

Third Respondent paid all the dues of the employees in the amount of Rs.4.70 lacs. Several meetings are thereafter stated to have taken place between the Petitioner, the Third Respondent and officials of the State Government. The Third Respondent issued a recovery notice to the Petitioner on 30th September, 2000 demanding an amount of Rs.22,64,063/-. On 12th December, 2000 the Managing Director of the Third Respondent purported to issue a recovery certificate under Rule 17(2) of the Maharashtra Realization of Land Revenue Rules 1967. The recovery certificate was forwarded to the Collector. On 21st December, 2001 the office of the Collector issued a notice under Section 267 of the Maharashtra Land Revenue Code, 1966 through the Tehsildar for the recovery of an amount of Rs.17,52,281/- and it was stated that on the failure of the Petitioner to pay the amount, its properties would be sold by public auction.

3. The short question which arises before the Court in these proceedings is whether the recovery certificate issued by the Third Respondent under the Maharashtra Realization of Land Revenue Rules

1967 and the action adopted by the Collector of pursuing proceedings under the Land Revenue Code are sustainable. The Third Respondent and the Collector have proceeded on the basis that the dues payable to the Third Respondent are dues which can be recovered as land revenue under Section 267 of the Code. The Third Respondent, it is common ground, is a company incorporated under the Companies Act, 1956 and has therefore an independent juristic personality. Section 267 of the Land Revenue Code empowers the Collector to serve a notice of demand if any land revenue is not paid at or within the time when it becomes payable. Thereafter, under sub section (3), it is lawful for the Collector to recover the outstanding dues in the event of default by attachment and sale of the property of the defaulter. The expression 'land revenue' is defined in Section 2(19) to mean all sums and payments, in money received or legally claimable by or on behalf of the State Government from any person on account of any land or interest in or right exercisable over land held by or vested in him. For the purposes of the present case what is important is that the sum or payment must be

claimable by or on behalf of the State Government. A company incorporated under the Companies Act, 1956 has an independent corporate personality. Such a company, even if its share capital is owned by the Government, cannot be regarded as being part of the Government or a Government Department. This principle has been settled inter alia in the judgment of the Supreme Court in Western Coalfields Ltd. v. Special Area Development Authority, Korba (AIR 1982 SC 697). Art. 285(1) of the Constitution provides that the property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State. Section 127A(2) of the M.P. Municipalities Act and S.136 of the M.P.Municipal Corporation Act provided that property tax shall not be leviable, inter alia, on "buildings and lands owned by or vesting in the Union Government". Relying on these provisions, it was contended before the Supreme Court that since the appellant companies were wholly owned by the Government of India, the lands and buildings owned by them could not be subjected to property tax. The Supreme Court rejected the contention holding

thus :

> ".....Even though the entire share capital of the appellant companies has been subscribed by the Government of India it cannot be predicated that the companies themselves are owned by the Government of India. The companies, which are incorporated under the Companies Act, have a corporate personality of their own, distinct from that of the Government of India. The lands and buildings are vested in and owned by the companies, the Government of India only owns the share capital. In Rustom Cavasjee Cooper v. Union of India (1970) 3 SCR 530, 555 : (AIR 1970 SC 564 at p.584) (The Banks Nationalisation case) it was held:
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> "A company registered under the Companies Act is a legal person, separate and distinct from its individual members. Property of the Company is not the property of the shareholders. A shareholder has merely an interest in the Company arising under its Articles of Association, measured by a sum of

money for the purpose of liability, and by a share in the profit.""

The same view has been since reiterated, though in a different context, in Steel Authority of India Limited v. National Union Waterfront Workers (AIR 2001 SC 3527). The question which arose for consideration before the Supreme Court was whether the appropriate government within the meaning of Section 2(1)(a) of the Contract Labour (Regulation and Abolition) Act, 1970, was the Central Government. The Supreme Court held that even if a Government undertaking is 'state' for the purposes of Article 12, that would not necessarily render it an industry carried on by or on behalf of the Central Government. The Court adverted to its earlier decision in Heavy Engineering Mazdoor Union v. State of Bihar (AIR 1970 SC 82) where it was held that the mere fact that the entire share capital was contributed by the Central Government would not affect the legal position that the company was a distinct entity with a juristic personality of its own. The fact that a minister appointed the members or directors of the corporation; that he was entitled to call for

information or give directions which were binding on the directors and to supervise the conduct of the business would not render the Corporation as an agent of the State. These principles were reiterated in a subsequent decision in A.K.Bindal v. Union of India (AIR 2003 SC 2189) where the Supreme Court dealt with the Fertilizer Corporation of India and Hindustan Fertilizer Corporation which were companies registered under the Companies Act, 1956, the only difference being that they were government companies within the meaning of Section 617. The Court held that the identity of each company remains distinct from the Government.

4. In view of the settled position therefore which emerges from these decisions of the Supreme Court, it cannot possibly be contended that the Third Respondent is a department of the Government or that the dues which are payable to it can be recovered on that basis either under the provisions of the Land Revenue Code or under the Maharashtra Realization of Land Revenue Rules 1967. It may be noted that under Rule 17 of the Rules, a procedure is laid down for recovering sums due to any department of the Government or a local authority

or a co-operative society which are recoverable as arrears of land revenue. The provision is ex-facie not attracted to the Third Respondent which is a company incorporated under the Companies Act, 1956 with a juristic personality of its own.

5. In the circumstances, the Petition has to be allowed and is accordingly allowed. The proceedings that have been adopted by the Respondents under Section 267 of the Maharashtra Land Revenue Code, 1966 and under the Maharashtra Realization of Land Revenue Rules 1967 for the recovery of the alleged dues of the Third Respondent are quashed and set aside. However, this they shall not preclude the Third Respondent from taking steps that are otherwise available in law for the recovery of its alleged dues.

6. The Petition shall stand disposed of in the aforesaid terms. There shall be no order as to costs.